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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,424	06/28/2002	Muhammed Majeed	108064-00049	2480
4372	7590	04/20/2004	EXAMINER	
ARENT FOX KINTNER PLOTKIN & KAHN 1050 CONNECTICUT AVENUE, N.W. SUITE 400 WASHINGTON, DC 20036			JIANG, SHAOJIA A	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/926,424

Applicant(s)

MAJEED ET AL.

Examiner

Shaojia A Jiang

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 148-151, 175 and 177-191.Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

SSD
SHAOJIA ANNA JIANG
PATENT EXAMINER

4/17/04

Advisory Action

This Office Action is a response to Applicant's proposed response (Remarks, no proposed amendment) and Applicant's declaration of Dr. Vladimir Badmaev (inventor) under 37 CFR 1.132, after FINAL filed on March 16, 2004.

5. The rejection of Claims 148-151, 175, and 177-191 made under 35 U.S.C. 112, first paragraph, for new matter, of record stated in the Final Office Action dated December 16, 2003 is maintained.

The rejection of Claims 148-151, 175 and 177-191 made under 35 U.S.C. 103(a) as being unpatentable over Nagasawa et al. (JP 0428809, of record) in view of Shao et al. (of record) for reasons of record stated in the Final Office Action dated December 16, 2003 is maintained.

The rejection of Claims 148-151, 175, and 177-191 made under 35 U.S.C. 103(a) as being unpatentable over Taneja et al. (EP 0755940, of record) for reasons of record stated in the Final Office Action dated December 16, 2003 is maintained.

Applicant's arguments filed After Final with respect to all rejections of record in the Final Office Action December 16, 2003 have been considered but are not found persuasive.

Moreover, the declaration of Vladimir Badmaev under 37 CFR 1.132 filed March 16, 2004 is insufficient to overcome the rejection of Claims 148-151, 175 and 177-191 made under 35 U.S.C. 103(a) as being unpatentable over Nagasawa et al. (JP 0428809, of record) in view of Shao et al. which is as of 35 U.S.C. 102(a) date, for the following reasons.

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Declarations are provided as evidence and must set forth facts, not merely conclusions. *In re Pike et al.* 84 USPQ 235. The declaration of Vladimir Badmaev lacks facts as documentary evidence, e.g., notebooks, photographs, or drawings to prove the conception derived from them alone, not from Shao, Ho, Chin, Ma, and Huang, especially Professor Chi-Tang Ho who is the major author for this cited reference.

Further, the statement in this declaration, “the other authors of the literature reference Y Shao, CT Ho, CK Chin, W Ma, MT Huang were merely working under my direction” is a totally unsupported statement. Therefore, the declaration herein is considered insufficient to overcome the said rejection.

Further, as pointed out in the Final Office Action, the specification provides no clear and convincing evidence of nonobviousness or unexpected results, i.e., testing results or data demonstrating that the instant boswellic acids in their effective amounts to be administered to a host, i.e., an animal or a human, are useful in treating any autoimmune disease in an animal or a human. Furthermore, it is noted that the specification provides no side-by-side comparison with the closest prior art in support of nonobviousness for the instant claimed invention over the prior art. Note that arguments of counsel cannot take the place of factually supported objective evidence. See, e.g., *In re Huang*, 100 F.3d 135, 139-40, 40 USPQ2d 1685, 1689 (Fed. Cir. 1996); *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984).

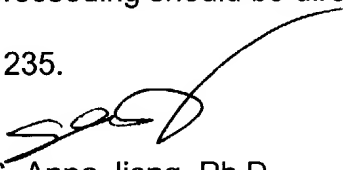
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is

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571.272.0627. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on 571.272.0629. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.



S. Anna Jiang, Ph.D.
Patent Examiner, AU 1617
April 17, 2004